

Reshaping Europe—Or “How To Keep Poor Cousins in (Their) Home”: A Comment on *The Transformation of Europe*

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INTRODUCTION

Social institutions survive and develop only if they are capable of innovation. Their strength is measured by their ability to respond to changes in their environment. By this standard, as Professor Weiler's article demonstrates, the European Community has proved its vitality. But, of course, the test continues. Indeed, it becomes more difficult, as the post-World War II order collapses, giving way to new hopes and uncertainties. The European Community quickly developed measures to provide short- and medium-term assistance to Central and Eastern European countries¹ and undertook preparations for closer relationships with some of them. These actions are important in several respects: in relieving some immediate hardships, in establishing foundations for dialogue and cooperation with the Community, and in facilitating the transition to democracy and market economy. But they fall short of perhaps the only policy capable of providing Central and Eastern Europe with the economic and psychological stimulus it needs to entrench democracy and successfully transform its economy. The only capable policy would be to guarantee that European countries able and willing to carry out the principles on which the Community is based would have *realistic* prospects of becoming its members.

I. THE CHANGING ENVIRONMENT

The main challenge for the European Community is neither to abolish the last obstacles to the internal market nor to balance the European Parliament's power aspirations and the national governments' wishes to retain the reins of

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1. The expression “Central and Eastern Europe” refers to Bulgaria, Czechoslovakia, Hungary, Poland, Romania, and Yugoslavia.

the Community. The challenge is to be a constructive force in post-Cold War Europe.

It is banal to recall that the Community was conceived mainly for political reasons. One of them was to build an economic power base from which its six original Member States could assert themselves in a world dominated by the superpowers. The Community's foundation was encouraged by the United States, which thought the EC economic integration would strengthen the Western military alliance and create a huge market for American products. For the same reasons, the Soviet Union and its satellites viewed the Community with distrust, even hostility. Now the Cold War has ended, and the Soviet Union is the loser. This defeat, like any defeat in prolonged warfare, created economic destruction, demoralization, and the foundering of the old power and authority structures in the Soviet Union itself and in Central and Eastern Europe. This situation forces all participants on the European stage to rethink their goals and strategies and to restructure the frameworks in which they act.

The unification of Germany and democratic revolutions of Central and Eastern Europe brought to light the fallacy of viewing "Europe" as limited to the European Community² or, at best, to Member States of the Council of Europe. The appropriation of the name was not geographically, historically, or culturally justified. It merely reflected the acceptance of the political division of Europe. The overthrow of European communist regimes suddenly put the Community face-to-face with millions of people right outside its frontiers, claiming the same cultural heritage and opting for market economy and democracy. However, Central and Eastern European countries' economies are largely devastated, new political institutions still weak and inexperienced, bureaucracies corrupt and inefficient, and education systems underdeveloped. Unemployment and inflation are growing, and standards of living are declining further. In 1990, industrial output dropped by an average of 20 percent. Recession has been accelerated by higher oil prices, disintegration of the trading system within the Council of Mutual Economic Assistance (CMEA),³ and the breakdown of established markets in the region.⁴ Instead, the Member States of the CMEA compete against each other for a small share of the Western market where their commodities can find outlet, a further weakening influence on their already fragile economies.

Briefly, Central and Eastern Europe is a landscape of waste and desolation from which many may be seeking to escape. There are no more concrete walls,

2. Even the title of Professor Weiler's paper reflects this linguistic usage, Weiler, *The Transformation of Europe*, 100 YALE L.J. 2403 (1991).

3. The CMEA was an economic cooperation and trade organization which included Bulgaria, Czechoslovakia, the German Democratic Republic, Poland, Romania, the U.S.S.R., Cuba, Mongolia, and Vietnam.

4. It is estimated that the combined cost to Central and Eastern Europe of all these changes is \$14-18 billion of increased foreign debt in one year alone. Louyot, *Europe Assistance*, L'EXPRESS, Dec. 13, 1990, at 66. This adds to roughly \$80 billion of foreign debt these countries already have. Merritt, *The EC Can't Afford To Let Eastern Europe Founder*, Int'l Herald Trib., Dec. 7, 1990, at 6, col. 1.

barbed wire, and restrictive migration laws to keep them in. Every Western democracy can now meet the Helsinki standards of allowing people to move freely across borders. The problem is that instead of receiving a trickle of academics, students, professionals, and visitors, Western Europe is likely to face hundreds of thousands, even millions, if law and order break down, ready to move West in search of jobs, education, and housing. Such a mass migration would create unprecedented threats to the economic and social stability of the Community.⁵

II. INNOVATION

Faced with these challenges, the Community has shown a healthy dose of resourcefulness and pragmatism. During the July 1989 economic summit, seven major industrial powers⁶ decided to support democratic changes already under way in Poland and Hungary. The seven asked the European Commission to coordinate their assistance program for the economic reconstruction of Poland and Hungary (PHARE). Soon other countries joined in this effort, forming the so-called Group of 24. In 1990 the Community's contribution to financial aid in the framework of PHARE was directed at five major objectives: agriculture sector restructuring, improvement of access to Western markets, investment promotion, environmental protection, and professional training.⁷

To finance these activities a new account was introduced to the 1990 Community budget.⁸ The European Investment Bank opened an ECU 1 billion credit line over a period of three years (1990-1992),⁹ and the European Steel and Coal Community extended credit to finance mainly projects involving joint ventures and sales of community steel. In addition, Hungary and Poland received generalized tariff preferences, including some favorable tax rates on agricultural products of special interest to these countries. Also, the Community accelerated, ahead of the deadlines in the trade agreements,¹⁰ the elimination of specific quantitative restrictions for Hungary and Poland and suspended non-

5. See Vienna Intergovernmental Conference on Movement of Persons coming from Central and Eastern Europe, Jan. 24-25, 1991, *Communique final, reprinted in* EUROPE DOC. (No. 1685) 1 (Jan. 30, 1991) (author's translation).

6. The United States, Japan, Canada, Germany, France, Italy, and the United Kingdom.

7. Council Regulation No. 3906/89 of 18 December 1989 on economic aid to the Republic of Hungary and the People's Republic of Poland, 1989 O.J. (L 375) 11; Comision de las Comunidades Europeas, XXIII Informe General sobre la actividad de las Comunidades Europeas 1989, at 341 (1990) (EC Commission, General Report XXIII (1989) on the activities of the European Communities).

8. ECU 500 million in 1990. Comision de las Comunidades Europeas, XXIV Informe General sobre la actividad de las Comunidades Europeas 1990, at 305 (1991).

9. Council Decision No. 90/62 of 12 February 1990 granting a Community guarantee to the EIB against losses under loans for projects in Hungary and Poland, 1990 O.J. (L 042) 68.

10. Agreement of 26 September 1988 between the EEC and Hungary on trade and commercial and economic cooperation, 1988 O.J. (L 327) 1. Agreement of 19 September 1989 between the EEC and Poland on trade and commercial and economic cooperation, 1989 O.J. (L 339) 1.

specific quantitative restrictions applicable to these two nations.¹¹ During 1990, democratic reforms made other Central and Eastern European countries eligible for the PHARE aid.¹² The program was extended to the German Democratic Republic (before unification), Czechoslovakia, Bulgaria, Yugoslavia, and later Romania.¹³ The problems of the Soviet economy are of such magnitude that EC aid would be of limited significance. The Community did grant some immediate food aid and a medium-term program of technical assistance with the condition that it was meant to help the Soviet Union mobilize its own resources.¹⁴

In 1990, parallel to the program of financial and technical assistance, the Community completed negotiations of bilateral trade and commercial and economic cooperation agreements with all Central and Eastern European countries and the Soviet Union.¹⁵ Three states of Central Europe—Czechoslovakia, Hungary, and Poland—have emerged as special cases. Reforms undertaken there, notwithstanding many differences among those countries, go further than anywhere else in Eastern Europe, and their economies promise quicker recovery. Each of the three is currently engaged in bilateral negotiations of association agreements with the Community.¹⁶ Their principal objective is to establish zones of free exchange coupled with free movement of capital, services, and persons.¹⁷ The process will spread over several years to allow the economies of the associated countries to adjust and improve their competitive positions. At the beginning, the Community does not demand complete reciprocity in liberalizing trade. Rather, it wants to introduce the free movement of goods, capital, services, and persons only when economies of associated countries have improved sufficiently to accept and absorb the rules of the

11. Council Regulation No. 3381/89 of 6 November 1989 liberalizing quantitative restrictions with regard to Poland and Hungary, 1989 O.J. (L 326) 1; Council Regulation No. 3691/89 of 4 December 1989 suspending quantitative restrictions in respect to Poland and Hungary, 1989 O.J. (L 362) 1.

12. Countries eligible for PHARE assistance must provide practical evidence of their commitment to the rule of law and respect for human rights, the establishment of multiparty systems, free and fair elections, and economic liberalization with a view to introducing market economies. In practice these criteria are not strictly applied. Conclusions de la Presidence, Strasbourg, (Doc. No. SN 441/2/89) 10 (Dec. 8-9, 1989) (Conseil Europeen).

13. 1990 O.J. (L 257). So far the Group of 24 has committed some \$21 billion to assisting Eastern Europe. EUROPE DOCUMENTS (No. 5361) 9 (Oct. 31, 1990). All these actions are conducted in coordination with the International Monetary Fund (IMF), which, in addition to loans, established stabilization funds to support convertibility of currencies in Poland, Czechoslovakia, and Hungary. The IMF foresees joint finance for Central and Eastern Europe to reach \$24 billion over a three year period. By comparison, in 1989 NATO defense expenditure amounted to approximately \$470 billion. WEEKLY EUROPE SELECTED STATISTICS (No. 709) 2 (Dec. 17, 1990).

14. Conclusions de la Presidence, Deuxieme Partie, Rome (Conseil Europeen) (Doc. No. SN 428/90) 2-4 (Dec. 14-15, 1990).

15. The Community has also established diplomatic relations with all of these countries.

16. The mandate of the Commission to negotiate was approved by the Council on December 18, 1990. See EUROPE DOCUMENTS (No. 5396) 5 (Dec. 20, 1990). The EEC Treaty, art. 238, will be the basis for the conclusion of these agreements.

17. *Association Agreements with the Countries of Central and Eastern Europe: A General Outline*, reprinted in EUROPE DOCUMENTS (No. 1646/47) 1 (Sept. 7, 1990).

Single European Market. This process would be facilitated by a gradual approximation of the laws of associated countries to those of the Community in such areas as company law, company accounts and taxes, indirect taxation, financial services, rules on competition, health and safety, consumer and environmental protection, technical rules and standards, intellectual property, and transport. The association agreement negotiations also include provisions for economic cooperation, aiming at, *inter alia*, the modernization and conversion of industry, the restructuring of individual sectors, the development of consumer goods and market services, the promotion and protection of private investment, and the reduction of differences in the areas of standardization and certification.

Czechoslovakia, Hungary, and Poland would like these treaties to be preparation for full membership. The Community agreed reluctantly to include in preambles to the association treaties a carefully worded reference to the future (but by no means automatic) *adhesion*. Despite this concession, the Community views association as a goal in itself rather than part of an automatic transition toward membership. The association agreements are to be effective for an unlimited time and in no way predetermine other possible arrangements.¹⁸ In fact, however, they do nourish hopes of future membership by creating some instruments that encourage economic conversion of the associated states and some adjustment of their laws to those of the Community.¹⁹ Pragmatists might say that this approach is prudent and open-ended enough to introduce incremental but permanent changes that prepare the associated countries for membership in the Community. The problem is that this process may be too slow and indirect and contain incentives too mild to make a real and necessary impact on the economies of the associated states. Agreements to phase out customs duties, gradually liberalize trade in services, or, in a piecemeal fashion, introduce free movement of capital are insufficient to contribute substantially to restructuring these economies. Indeed, the free trade zone can be mutually beneficial only if partners are of comparable economic strength.²⁰ If they are not, the weaker needs a certain level of protection while benefiting from better access to the market of the stronger partner until its own economy becomes competitive.

Poland is an example; I shall try to explain it, but I am fully aware that economic processes under way in Poland or, for that matter, in Central Europe, are still poorly understood by many. Most international economists assume that the economic program capable of bringing about lasting change in Eastern Europe must follow a number of rigorous steps. First, stabilize the economy by freezing wages, restraining credit, and cutting the budget deficit. Then,

18. *Id.* at 4.

19. Such instruments include the establishment of zones of free exchange between each of the associated countries and the EC as well as the gradual introduction of free movement of persons, capital, and services.

20. Consider the role of structural (regional, agricultural, and social) funds in the European Community.

devalue and make convertible the national currency to open a channel from the domestic economy to the outside world. Abolish trade barriers, liberalize prices, and eliminate subsidies so that economic actors have incentives to act more rationally. Construct a legal framework to protect free competition and create a sound financial and banking system. Then, privatize some state-owned industries to stimulate noninflationary economic growth and competition. Finally, create a social "safety net" to ease tensions from the ensuing unemployment. So far, only Poland has consistently followed this path,²¹ and its program has been prized, among others, by the IMF, the World Bank, and the Community.²² In this approach, opening the country through, inter alia, liberalization of trade is arguably the most important instrument of economic recovery. Following this logic, the creation of a free exchange zone with the Community is, in itself, a great step toward stimulation of the associated country's industry.

However, the Polish example may demonstrate the necessity of substantially altering this way of thinking. In 1990, its economy has not just stabilized—it has stagnated. Recession can probably be attributed to several factors, but one is particularly important for this argument. Normally, the action of opening a national economy to the outside world, coupled with the devaluation of its currency, increases the competitiveness of its national industry. "Normally," that is, when products have the correct price and quality to find their way to the market. However, when neither price nor quality are correct, the consequences for national industry are obviously disastrous. Post-Communist economies are organically uncompetitive largely because they are still predominantly state-owned. This means they are monopolistic, environmentally destructive, and wasteful, devoid of managerial and technological know-how, and afflicted with notoriously poor distribution systems. Any reform must first address the source of this situation, and that requires rapid and widespread *privatization*.

Central and Eastern Europe does not have sufficient capital to privatize quickly and effectively, and must therefore attract foreign capital.²³ To make privatization work, domestic and foreign private investors need a climate of confidence and stability as well as a coherent vision of the direction the economy is heading. Investors want to know which markets will be available and on what conditions, what priorities of development are most productive, and how to channel investments to get a competitive edge. The Community can lead in this endeavor not only by providing financial and technical support, but, more

21. Outline Economic Program, Warsaw, October 1989 (Polish Council of Ministers). (typescript on file with the author).

22. A recent landmark study of the Soviet economy by the IMF, the World Bank, the OECD, and the European Bank for Reconstruction and Development recommends that the Soviet Union follow Poland's example. See Hoffman, *Soviets Advised: Change Economy Now*, Int'l Herald Trib., Dec. 19, 1990, at 2, col. 1.

23. At present, foreign investment in Central and Eastern Europe is merely \$2 billion, or about 0.5% of all foreign direct investment worldwide. Merritt, *supra* note 4, at 6, col. 2.

importantly, by encompassing Central Europe in the goal of the Single European Market. The Community can thus give the economic actors in Central and Eastern Europe the clear azimuth and parameters necessary in times of tumultuous change.

Can the Community fulfill this role without jeopardizing its own cohesion and progress towards political, economic, and monetary union? Both the Council of Ministers and the Commission seem to think not. Therefore, they tend to treat association as an enduring substitute for membership which would keep Central Europe at a safe distance from the European Community. In their view, association constitutes a stage in the systemic adaptation of the economies and political structures of the post-communist countries, and there is no point in envisaging the enlargement of the Community until the transition from centrally planned to market economies in the post-communist countries is complete. The old argument, that the Community should “deepen” before “enlarging” (“*l’approfondissement avant l’elargissement*”), can be heard louder than ever before.

Several points can be made at this juncture. The experience of successive accessions to the community disproves the thesis that *l’approfondissement* and *l’elargissement* are incompatible. As Professor Weiler points out, enlargement became a vehicle for the strengthening of the European Community and its Member States.²⁴ New Members see the opportunities membership opens and give support to the joint decisionmaking of the Community. Consequently, seeing their roles enhanced, Member States are willing to deepen integration and evolve its application to new fields. Incidentally, the Southern countries²⁵ went from authoritarianism to democracy within a few years (in any case, no longer than twelve); the opening up of their economies was also accomplished relatively rapidly. This suggests that each country of Central Europe can, given the right set of domestic economic programs, political institutions, and constructive international support, achieve relatively quickly a productive market economy and a stable parliamentary democracy. While this is occurring, the Community need not slow its own development and wait for Central and Eastern Europe to catch up.²⁶ The Community has considerable experience in developing different aspects of its union at several different speeds. The European Monetary System offers an excellent example of this ability. One can conceive of an enlarged Community in which the Central European states are integrated politically, but whose full economic membership is postponed until more favorable conditions exist. A reasonable multi phase transition period and safeguards against serious disturbances could be arranged to protect the essential interests of all parties.

24. Weiler, *supra* note 2, at 2448-49.

25. Greece, Portugal, and Spain, which joined the EC in the 1980's.

26. *But see* Interview with Jacques Delors, President of the Commission, L'EXPRESS, Dec. 13, 1990, at 69.

In this context, the experience of integration of the German Democratic Republic into the Community is important. It took the Community five months to prepare the legal framework for the accession of East Germany. To be sure, the West German government's determination to have the matter settled as soon as possible undoubtedly sped the EC activities. Despite this important boost, the meaning is clear for other contexts: given political will, economic difficulties do not make the process of integration impossible. East Germany's only advantage for integration over other Central European countries is the national language it has in common with a current member of the Community. Otherwise, its political and economic structure and its education and cultural conditioning are typical of Central Europe. Assuming, for the sake of argument, that each Central European country is "godfathered" by two or three EC members in the same way East Germany was, does the idea of an enlarged Community still look so unacceptable? To go a step further, would not the inclusion of the European Free Trade Association countries²⁷ help by spreading the cost of restructuring Central European economies?

It is easy to imagine arguments against such a fantasy: for example, the increased difficulties of Community decision making and conflicts with national economic interest groups. These are more or less technical problems, which can be resolved once the basic policy is adopted in response to the changes in Europe. For instance, the introduction of a majority vote as a general rule would diminish Community decisionmaking difficulties. Joint ventures between Central European and Community producers could ease considerably economic conflicts of interest. New members could be included fully in the institutions of political union. During the transitional period, they could be granted, on all levels of economic and monetary policy decisionmaking, "observer" status, including a right to be consulted on matters having direct impact on a country in question. Such a reform would offer a rather low-cost method of achieving a wider Europe.

III. INSTEAD OF CONCLUSIONS

The Community is no stranger to innovation. Even in its policy towards Central and Eastern Europe, the Community showed this ability. It assumed regional responsibility for the first time in history. In this way it was able to develop a foreign policy, thus anticipating its legal investiture with such powers under the future political union treaty. Credit for this evolution should go largely to the Commission, which, with the blessing of some national governments, seized the opportunity to blur division lines between the Community's and the European Political Cooperation's decisionmaking in the policy and

27. The member states of EFTA include Austria, Finland, Iceland, Norway, Sweden, and Switzerland.

administration of assistance to Central and Eastern Europe.²⁸ This brought the Commission to prominence in the dialogue between the East and the West and consequently further strengthened its position within the Community power structure.²⁹ But, alas, it seems that these developments exhausted the Community's capacity to innovate.

Why is the Community now devoid of broader vision? Maybe because in a European Community conspicuous for its "democracy deficit," there is no other Voice³⁰ than that of its Member States, and this Voice is narrowly pragmatic. Except in Germany, there is no important public debate about the future of Europe. As Alain Touraine says, "[i]t is not a paradox to say that [it is] the weakness of national debates [that] explains the weakness of international initiatives."³¹ Instead of innovation, there is a growing dissonance between the steady internationalization of economies and the inability to break loose from parochialism and focusing on narrow current interests. "Europe" (read, the European Community) is seen as a vehicle to strengthen national economies. This is a pitifully shortsighted vision. Europe should be a community encompassing in one polity all those who share a common cultural heritage, practice democracy, and participate in free and open markets.

The advantages of including Central Europe in such a community are numerous. The enhanced security of the continent and the development of new markets are argument enough for the inclusion of Hungary, Poland, and Czechoslovakia.³² By linking these countries to the European Community, a zone of political stability and economic growth would be created, giving other countries in the region a model to follow. The alternative is the petrification of the division of Europe into zones of prosperity and economic stagnation; the slowing of the process of transition to market economy and political democracy in Central and Eastern Europe; the wasting of the historical chance to build a unified Europe rather than a geographically limited entity dominated by Germany; and the limitation of prospects for constructive dialogue and cooperation with the Soviet Union and its republics.

The pressure of the new environment increases the need for stabilization in Europe, and makes the creation of the European Union more urgent. But the Community should broaden its focus. Not limiting itself to looking inward for deeper cohesion and stronger powers, it should derive new energy from the inclusion of its Central European neighbors. If the Community fails to do this, it will lose its chance to play an important role in the formation of future world institutions. In addition, the vacuum created by the foundering of the old

28. The European Political Cooperation, an institution distinct from the Community, is meant to coordinate foreign policy of the Member States of the EC.

29. Cf. Weiler, *supra* note 2, at 2463.

30. See *id.* at 2411.

31. Touraine, *La Europa poscomunista*, EL PAIS, Aug. 1, 1990, at 7, col. 1 (author's translation).

32. The combined population of Central Europe is 64 million. European Parl., *Comecon in Figures*, Statistical Series (No. 2) 19, 25, 31 (Jan. 1990) (publication of the Directorate General for Research).

structures in Eastern Europe may threaten the very principles for which the Community stands: lasting peace in Europe, democracy, tolerance, and prosperity.